

CONDITION PRECEDENT TO EFFECTIVITY OF NEW POSITIONS AND SALARY INCREASES

For the information and guidance of all concerned, there are quoted hereunder the 1st indorsement dated September 16, 1948, of this Department and the 2nd indorsement dated September 27, 1948, of the Office of the President on the above subject-matter:

"Respectfully forwarded to the Honorable, the Executive Secretary, Malacañan, Manila.

"The attached Resolution No. 31 x x x Mayors League in effect requests that the provision of Section 648 of the Manual of Instructions to Treasurers, requiring the approval of the Secretary of Finance as a condition precedent to the effectivity of items of municipal budgets representing new positions and increases of salaries of municipal officers and employees, be no longer observed in view of Republic Act No. 238.

"The legality of this provision of Section 648 of the Manual of Instructions to Treasurers has been upheld by the Secretary of Justice in his opinion No. 18, series of 1948, copy enclosed⁽¹⁾ It is a wholesome regulation and is necessary to make effective the supervisory authority of the Secretary of Finance over the financial affairs of the local governments in accordance with Commonwealth Act No. 78 and Executive Order No. 167, series of 1938. It is not necessarily in conflict with the provisions of Republic Act No. 238, prescribing a new procedure for the preparation of municipal budgets. This Act does not in any way modify the supervisory power or authority of the Department of Finance over the financial affairs and officers of the local governments and

of Civil Service and the Honorable, the Auditor General, and approved by the Honorable, the Secretary of Education.

CECILIO PUTONG

Director of Public Schools

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with it the regulation in question can stand side by side with complete harmony. The very Resolution under consideration shows why this regulation is still needed. According to said Resolution, some municipalities x x x can not afford to set aside the amount necessary to cover the amortization which is required of them under Section 4 of Republic Act No. 304, yet the local authorities concerned are very desirous of increasing the salaries of the officers and employees thereof. Were it not, therefore, for the regulation in question, there would be no way to require said municipalities to meet their statutory obligation first before increasing salaries.

In view of the foregoing, it is recommended that the request of the x x x Mayors League referred to above be denied. In passing, it may be stated that the policy of this Department is to allow the local authorities as much autonomy as possible in the administration of the finances of their governments so long as the statutory and contractual obligations and the ordinary essential services of their governments are adequately provided for and so long as the new ventures which such governments desire to embark upon would not cause insolvency or bring about any financial impasse or embarrassments."

"Respectfully returned to the Honorable, the Secretary of Finance, Manila.

"The view expressed by that department in the preceding indorsement is sustained and in accordance with the recommendation made therein, the request of x x x Mayors League in the attached Resolution No. 31, current series, is hereby denied."

Provincial Treasurers are hereby re-

requested to advise the Municipal Councils and Municipal Treasurers of the contents hereof.—*PROVINCIAL CIRCULAR (Unnumbered), dated Oct. 27, 1948, of Undersecretary of Finance.*

January 28, 1948

Governor S. Escudero.
Sorsogon, Sorsogon
Dear Governor:

This is a reply to your letter of the 19th instant, requesting my opinion on the legality of the established practice whereby items representing salary increases of municipal employees contained in the proposed budget passed by a municipal council and thereafter submitted to the provincial treasurer for his corresponding approval are made to take effect, not upon the approval of the municipal budget by the provincial treasurer as provided in section 2298 of the Revised Administrative Code, but only after it has been favorably acted upon by the Secretary of Finance in accordance with section 648 of the Manual of Instructions for Treasurers.⁽¹⁾

The Revised Administrative Code describes the procedure to be followed in the adoption of municipal budgets thus:⁽²⁾ On or before the 15th day of January of each year, the municipal treasurer is required to present to the council a certified and detailed statement of all municipal receipts and expenditures pertaining to the preceding year, Sec. 2295. Upon receipt of the statement, the council shall make a careful estimate of the probable income of the municipality for the current year and upon this basis, shall proceed to make, by way of appropriation, the detailed allotments of the respective municipal requirements for the same. The appropriation thus made by the council constitutes the budget, and immediately upon its passage, shall be submitted to the Provincial Treasurer for approval.⁽³⁾ The Provincial Treasurer shall then pass upon the same by expressly either approving or disapproving it, not later than sixty days after

the receipt thereof, returning said budget with the accompanying documents to the council, through the Mayor, Sec. 2296. The Provincial Treasurer may disapprove one or more items of expenditure in the proposed budget, and at the same time give his approval to the other parts thereof. When he disapproves any item or items, he shall submit to the council a statement in writing, giving his reasons therefor. If the council is dissatisfied with the action of the provincial treasurer, a supplemental budget containing only the item or items disapproved may be submitted to the provincial board with a statement of the reasons for making such expenditures. If the appeal is sustained as to one or more items, the provincial treasurer shall forthwith approve the budget as those items; otherwise, the item or items in question shall stand disapproved, Sec. 2297. Until the Mayor shall receive the approved budget from the Provincial Treasurer, the budget for the preceding year shall determine the salaries and positions of all permanent officers and employees of the municipality, Sec. 2298.

These provisions of law, it will be noted, merely state that a proposed budget, passed by a municipal council has to be submitted to the provincial treasurer for approval; but they do not require the approval of the Secretary of Finance as a condition precedent to the effectivity of such budget. These provisions should, however, be read in conjunction with other statutes on the subject. Under Commonwealth Act No. 78, the Secretary of Finance is vested with supervisory power and control over the financial affairs of the provincial, city and municipal governments, and also over provincial, city and municipal treasurers. In furtherance of this act, Executive Order No. 167, dated October 8, 1938, was promulgated, which prescribes in detail the procedure to be observed by political subdivisions in the adoption of their respective budgets. Section 3 thereof reads:

“In conformity with the foregoing, the budgets of the provincial

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governments shall be submitted to the Department of Finance, through the Department of the Interior, such budgets to contain the plantilla of personnel in such details as heretofore prescribed and clear and specific statements both of the estimated income and the proposed expenditures for the corresponding fiscal year. In thus submitting the budget, the provincial board should enclose a written opinion of the provincial treasurer as prescribed in section Two thousand one hundred seven of the Administrative Code, together with a statement of the district engineer containing his comments on the proposed expenditures for his office as well as for public works, and also similar written-statements of the division superintendent of schools, the district health officer, the provincial auditor, the provincial fiscal, and the provincial agricultural supervisor regarding the different kinds of proposed expenditures for the activities respectively under them. The budget with all the accompanying statements shall be sent to the Department of the Interior, which should make its comments on the proposed expenditures. The Secretary of the Interior shall then send the budget with his comment and recommendation together with the corresponding opinion and statements of the chiefs of local offices to the Department of Finance. The Department of Finance, in taking action on the budget, shall be guided by the comment and recommendation of the Secretary of the Interior.

"The same procedure shall be observed in the case of supplemental budgets."

Although the above procedure is designed specifically for provincial governments, yet section 7 of the said order expressly directs that the same procedure shall be followed in the supervision and control of the personnel and finances of the city and municipal governments. Further indicative of the supervisory authority exercised by the Secretary of Finance over local budgets,

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is Section 9 thereof which declares that "in revising the budgets of local governments and in passing over the expenditures made by such entities . . . the Department of Finance shall be guided by the principle that provided that the expenses contemplated are within their financial capacity, the local governments shall be given a large degree of freedom in determining for themselves the propriety and wisdom of the expenses that they make."

In view of the foregoing, I am of the opinion that the procedure prescribed in Section 648 of the Manual of Instructions for Treasurers requiring approval of the Secretary of Finance as a condition precedent to the

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of property which in his opinion (one sided) is irregular, unnecessary, excessive or extravagant. As a quasi-judge of accounts and claims he allows or disallows expenditures which in his opinion are allowable or not allowable (after due process of law) for being irregular, unnecessary, excessive or extravagant according to his findings. (This presupposes the holding of investigation or trial or the mere study by the Auditor of papers submitted by claimants and the officials concerned)

Considering, therefore, that former Insular Auditors have enjoined provincial auditors to forget friendship where their duties begin, the Auditors should not be blamed when they perform their reporting duties conformably with law. To prevent Auditors from performing their reporting duties an official should give such answer as may explain their right on claims instead of questioning or challenging the warnings or suspensions of the Auditor on claims.

Besides this, Auditors are authorized to render decisions about accounts and claims against the government. With a view to preventing the reversal of Auditor's suspensions on accounts, they have been enjoined by the Auditor General to forward to the Auditor General, when the said provincial auditor believes this is necessary, the paper received by the Auditor questioning or challenging the suspensions. Therefore, a government official should not feel sore at the provincial auditor when answers received by Provincial Auditor questioning or challenging the suspensions are forwarded to the Auditor General. In order to prevent an official concerned from being embarrassed resulting from the forwarding by the Provincial Auditor of his answer to the Auditor's suspension to the Auditor General, it behooves the official concerned to see to it that his letters to the provincial auditor contains judicious and discreet expressions according to lawful merit of claims as understood by the claimant or chief of office on controverted matters and devoid of sarcastic, questioning or challenging at-

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titude to the Provincial Auditor, considering that, after all, the Provincial Auditor is the judge of accounts and claims against the government. One thing more and I will be through. Under Section 597 of the Revised Administrative Code, the provincial Auditor has *exclusive original jurisdiction* over provincial and municipal accounts. This means that with respect to vouchers reaching the Auditor's Office no official in the province may meddle in the performance of duties by the Auditor, that is, no official may tell the Auditor what to suspend or question and what to allow and disallow and no official in the province may dictate how the Auditor should run his office. It is only the Auditor General or his authorized representatives may meddle in the auditing functions of the Provincial Auditor. Any one who is however aggrieved by the action or decision of the Auditor or decision of the Provincial Auditor regarding accounts or claims has the right to appeal therefrom to the Auditor General thru the provincial auditor.

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Condition Precedent

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effectivity of items representing salary increases of officials and employees contained in the proposed budget of a municipal council is legal, the same being in conformity with Commonwealth Act No. 78 and Executive Order No. 167 above mentioned.

Respectfully,
(Sgd.) ROMAN OZAETA
Secretary of Justice

Opinion No. 18
Series 1948

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